

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 JESSE ARON ROSS,
4 Plaintiff,

5 v.

6 BRIAN WILLIAMS, *et al.*,
7 Defendants.

Case No. 2:21-cv-00630-APG-EJY

ORDER

8
9 **I. DISCUSSION**

10 On April 16, 2021, Plaintiff, an inmate in the custody of the Nevada Department of
11 Corrections (“NDOC”), submitted a civil rights Complaint under 42 U.S.C. § 1983. ECF No. 1-1.
12 Plaintiff neither paid the full \$402 filing fee nor filed an application to proceed *in forma pauperis*.

13 On April 27, 2021, Plaintiff filed a Motion for Court Order Directing NDOC to Complete
14 Financial Certificate. ECF No. 3. In his Motion, Plaintiff states that in anticipation of filing this
15 action, he has submitted the Court approved financial certificates to the prison law library, one each
16 month since January 1, 2021. Plaintiff further states there has been no response from the prison, and
17 the prison has not returned the completed financial certificates to Plaintiff. *Id.* at 2.

18 Under 28 U.S.C. § 1915(a)(2) and Local Rule LSR 1-2, an inmate seeking to commence a
19 civil action may apply to proceed *in forma pauperis*, which allows the inmate to file the civil action
20 without prepaying the full \$402 filing fee. To apply for *in forma pauperis* status, the inmate must
21 submit all three of the following documents to the Court:

- 22 (1) a completed **Application to Proceed in Forma Pauperis for Inmate**, on this Court’s
23 approved form (i.e. pages 1 through 3 with the inmate’s two signatures on page 3),
24 (2) a **Financial Certificate** properly signed by both the inmate and a prison or jail official
25 (i.e. page 4 of this Court’s approved form), and
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1 (3) a copy of the **inmate's prison or jail trust fund account statement for the previous**
2 **six-month period.** If Plaintiff has not been at the facility a full six-month period, Plaintiff

3 must still submit an inmate account statement for the dates he has been present at the facility.

4 In the event Plaintiff is having difficulty obtaining the required financial certificate and
5 inmate account statement for the previous six-month period from prison officials, Plaintiff shall file
6 a declaration detailing when he requested the documents, who he spoke to about the status of the
7 documents, who he followed up with after he did not receive the documents, and their responses.
8 Plaintiff's declaration shall include dates of his requests, dates of his follow-up requests, names of
9 the prison officials that he spoke to about the matter, and their responses. If Plaintiff's declaration
10 demonstrates that he has done all that was possible to acquire the documents from prison officials,
11 the Court will consider his application to proceed *in forma pauperis* complete.¹

12 Accordingly, the Court grants Plaintiff a **one-time extension** until on or before **June 28,**
13 **2021** to file a fully complete application to proceed *in forma pauperis* containing all three of the
14 required documents or, alternatively, the first three pages of the application to proceed *in forma*
15 *pauperis* and a declaration detailing the efforts he took to acquire the financial certificate and inmate
16 account statement from prison officials. Absent unusual circumstances, the Court will not grant any
17 further extensions of time. If Plaintiff does not file a fully complete application to proceed *in forma*
18 *pauperis* with all three required documents or, alternatively, the first three pages of the application
19 to proceed *in forma pauperis* and a declaration detailing the efforts he took to acquire the financial
20 certificate and inmate account statement from prison officials on or before **June 28, 2021**, the Court
21 will recommend dismissal of this case without prejudice for Plaintiff to file a new case with the
22 Court when Plaintiff is able to acquire all three of the documents needed to file a fully complete
23 application to proceed *in forma pauperis* or, alternatively, the first three pages of the application to
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26 ¹ Plaintiff must still submit the first three pages of the application to proceed *in forma pauperis* on this Court's
27 approved form with his declaration. If Plaintiff does not submit the first three pages of the application to proceed *in*
28 *forma pauperis* with the declaration, the Court will recommend dismissal of this case without prejudice for Plaintiff to
open a new case when he is able to acquire the required documents.

1 proceed *in forma pauperis* and a declaration detailing the efforts he took to acquire the financial
2 certificate and inmate account statement from prison officials.

3 A dismissal without prejudice means Plaintiff does not give up the right to refile the case
4 with the Court, under a new case number, when Plaintiff has all three documents needed to submit
5 with the application to proceed *in forma pauperis* or, alternatively, the first three pages of the
6 application to proceed *in forma pauperis* and a declaration detailing the efforts he took to acquire
7 the financial certificate and inmate account statement from prison officials. Plaintiff may choose
8 not to file an application to proceed *in forma pauperis* and instead pay the full filing fee of \$402 on
9 or before **June 28, 2021** to proceed with this case.

10 The Court will retain Plaintiff's civil rights Complaint (ECF No. 1-1), but the Court will not
11 file the Complaint unless and until Plaintiff timely files a fully complete application to proceed *in*
12 *forma pauperis* with all three documents, or, alternatively, the first three pages of the application to
13 proceed *in forma pauperis* and a declaration detailing the efforts he took to acquire the financial
14 certificate and inmate account statement from prison officials, or pays the full \$402 filing fee.

15 **II. CONCLUSION**

16 For the foregoing reasons, IT IS HEREBY ORDERED that the Clerk of the Court shall send
17 Plaintiff the approved form application to proceed *in forma pauperis* by an inmate, as well as the
18 document entitled information and instructions for filing an *in forma pauperis* application.

19 IT IS FURTHER ORDERED that on or before **June 28, 2021**, Plaintiff shall either pay the
20 full \$402 filing fee for a civil action (which includes the \$350 filing fee and the \$52 administrative
21 fee) or file with the Court:

22 (1) a completed **Application to Proceed in Forma Pauperis for Inmate** on this Court's
23 approved form (i.e. pages 1 through 3 of the form with the inmate's two signatures on page
24 3),

25 (2) a **Financial Certificate** properly signed by both the inmate and a prison or jail official
26 (i.e. page 4 of this Court's approved form), and
27
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(3) a copy of the **inmate's prison or jail trust fund account statement for the previous six-month period**. If Plaintiff has not been at the facility a full six-month period, Plaintiff

must still submit an inmate account statement for the dates he has been present at the facility.

IT IS FURTHER ORDERED that if Plaintiff is not able to obtain his financial certificate and inmate account statement from prison officials, Plaintiff shall file the first three pages of the application to proceed *in forma pauperis* together with a declaration detailing the efforts he took to acquire the financial certificate and inmate account statement from prison officials.

IT IS FURTHER ORDERED that, if Plaintiff does not file a fully complete application to proceed *in forma pauperis* with all three documents, or, alternatively, the first three pages of the application to proceed *in forma pauperis* and a declaration detailing the efforts he took to acquire the financial certificate and inmate account statement from prison officials, or pay the full \$402 filing fee for a civil action on or before **June 28, 2021**, the Court will recommend dismissal of this action without prejudice for Plaintiff to refile the case with the Court, under a new case number, when Plaintiff has all three documents needed to file a complete application to proceed *in forma pauperis*.

IT IS FURTHER ORDERED that the Motion for Court Order Directing NDOC to Complete Financial Certificate (ECF No. 3) is DENIED as moot.

IT IS FURTHER ORDERED that the Clerk of the Court shall retain Plaintiff's civil rights Complaint (ECF No.1-1) but will not file it at this time.

DATED this 28th day of April, 2021.


ELAYNA J. YOUCHAH
UNITED STATES MAGISTRATE JUDGE